



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: AUGUST 22, 2022

IN THE MATTER OF:

Appeal Board No. 623403 A

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 623402 A, 623403 A and 623404 A, the Commissioner of Labor applied to the Appeal Board pursuant to Labor Law § 534 for a reopening

and reconsideration of Appeal Board Nos. 619485, 619486, and 619487, filed February 22, 2022, which affirmed the decisions of the Administrative Law Judge filed October 29, 2021 that sustained the Commissioner of Labor's timeliness objection and continued in effect the initial determinations holding the claimant ineligible to receive benefits, effective August 31, 2020 through September 13, 2020, on the basis that the claimant was not totally unemployed; charging the claimant with overpayments of \$703.50 in benefits recoverable pursuant to Labor Law § 597 (4) and \$300 in Lost Wages Assistance

benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 16 effective days and charging a civil penalty of \$105.52 on the basis that the claimant made willful misrepresentations to obtain benefits.

The Commissioner of Labor also applied to the Appeal Board, pursuant to Labor Law Section 620 (3), for a reopening and reconsideration of the decisions of the Administrative Law Judge filed October 29, 2021.

Upon consideration of the application to reopen, after due notice to the parties, and the written statement submitted on behalf of the Commissioner of Labor, the Board has decided to reopen and reconsider its decisions filed February 22, 2021 and the decisions of the Administrative Law Judge filed October 29, 2021.

The Commissioner of Labor has moved to reopen the Board's decisions in Appeal Board Nos. 619485, 619486, and 619487 so that they may be rescinded, and moved to reopen the decisions of the Administrative Law Judge so that they may be rescinded, in order to withdraw its timeliness objection and reconsider the initial determinations.

Due deliberation has been had. The Board has read the application to withdraw the Commissioner of Labor's timeliness objection. After a review of this case, there appears to be no reason to deny the application to withdraw.

Our review of the record reveals that the case should be remanded to hold a hearing. Further testimony and evidence should be taken on the issues of a lack of total unemployment, recoverable overpayment of benefits and willful misrepresentation before decisions are issued in this matter. The Commissioner of Labor is directed to be represented at the remand hearing for the purpose of setting forth the Commissioner's position with respect to the initial determinations. The employer is directed to produce Marianne Molloy, who shall be questioned in regard to the dates that the claimant was in training in August 2020 and the dates that she worked for the employer after her training concluded.

DECISION: The decisions of the Board are rescinded.

The decisions of the Administrative Law Judge are rescinded.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge be, and the same hereby are, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render new decisions, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

RANDALL T. DOUGLAS, MEMBER